

AMENDED IN SENATE APRIL 2, 2013

SENATE BILL

No. 742

Introduced by Senator Nielsen

February 22, 2013

An act to ~~amend Section 11340.3 of the Government Code, relating to state government.~~ *add Section 645.5 to the Penal Code, and to amend Section 6601 of the Welfare and Institutions Code, relating to defendants, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 742, as amended, Nielsen. ~~Administrative Procedure Act: Office of Administrative Law: director.~~ *Defendants.*

Existing law, as amended by Proposition 83 of the November 7, 2006, statewide general election, requires every inmate who has been convicted of an offense that requires him or her to register as a sex offender or any attempt to commit any of those offenses and who is committed to prison and released on parole to be monitored by a global positioning system (GPS) for life. Proposition 83 permits the Legislature to amend its provisions, either by a $\frac{2}{3}$ vote of the membership of each house, or by a majority vote of the membership of each house, if the amendments expand the scope of the application of the provisions of the proposition or increase the punishments or penalties provided in the proposition. Existing law permits, and with respect to certain sex offenders requires, the use of electronic monitoring by the department and by county probation departments to electronically monitor the whereabouts of individuals on parole and probation, respectively.

This bill would provide that any person who willfully removes or disables an electronic monitoring or supervising device, including a

GPS or other monitoring device, affixed to his or her person or the person of another, knowing that the device was affixed as part of a criminal sentence or juvenile court disposition, as a condition of parole or probation, or otherwise pursuant to law, is guilty of a public offense, punishable as specified. The bill would also provide for revocation of probation, parole, or postrelease community supervision, and would subject persons with a specified sex offense conviction who violate the section to be subject to lifetime GPS monitoring.

By creating a new crime, this bill would impose a state-mandated local program.

Existing law requires that whenever the Secretary of the Department of Corrections and Rehabilitation determines that an individual who is in custody under the jurisdiction of the department, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the secretary shall, at least 6 months prior to that individual's scheduled date for release from prison, refer the person for evaluation to the State Department of State Hospitals. Existing law requires the State Department of State Hospitals to evaluate the person in accordance with a standardized assessment protocol, developed and updated by that department, to determine whether the person is a sexually violent predator.

This bill would require the evaluation to be a face-to-face evaluation. The bill would require an agency having supervisory authority over an individual who has been convicted of a sexually violent offense to refer the individual to the State Department of State Hospitals for an evaluation pursuant to the law governing the civil commitment of sexually violent predators when the individual has been found, in an adjudicatory proceeding, to have knowingly removed or disabled, or to have knowingly permitted another to remove or disable, an electronic monitoring device affixed to his or her person pursuant to existing law. The bill would make additional technical changes.

By imposing additional duties on county agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

This bill would declare that it is to take effect immediately as an urgency statute.

~~The Administrative Procedure Act governs the procedures for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. The office is under the control of a director who is authorized to employ and fix the compensation of various employees.~~

~~This bill would make a technical, nonsubstantive change to that provision.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 645.5 is added to the Penal Code, to read:*
- 2 *645.5. (a) Any person who willfully and knowingly removes*
- 3 *or disables an electronic monitoring or supervising device,*
- 4 *including a global positioning system (GPS) or other monitoring*
- 5 *device, affixed to his or her person or the person of another,*
- 6 *knowing that the device was affixed as part of a criminal sentence*
- 7 *or juvenile court disposition, as a condition of parole or probation,*
- 8 *or otherwise pursuant to law, is guilty of a public offense,*
- 9 *punishable as follows:*
- 10 *(1) If the crime that triggered the requirement that the*
- 11 *monitoring device be affixed was a misdemeanor, the person is*
- 12 *guilty of a misdemeanor, punishable by imprisonment in a county*
- 13 *jail for up to one year, by a fine of up to one thousand dollars*
- 14 *(\$1,000), or by both that fine and imprisonment.*
- 15 *(2) If the crime that triggered the requirement that the*
- 16 *monitoring device be affixed was a felony, the person is guilty of*
- 17 *a felony, punishable by imprisonment in the state prison for 16*
- 18 *months, or two or three years.*
- 19 *(3) If the person was on probation, parole, or postrelease*
- 20 *community supervision, then the probation, parole, or postrelease*
- 21 *community supervision of that person may be revoked. No credit*
- 22 *toward completion of probation, parole, or postrelease community*

1 supervision may be earned during the period that the monitoring
2 device was disabled or removed, and if the person is subject to the
3 monitoring device because of a conviction for a sex offense
4 described in Section 290, the person shall be subject to a
5 revocation period of up to one year, as determined by the authority
6 responsible for supervising the probation, parole, or postrelease
7 community supervision, without earning credits.

8 (b) A person with a current or prior sex offense conviction who
9 is returned to prison for a GPS device violation under this section
10 or a new felony conviction shall be subject to the lifetime GPS
11 device requirements applicable to sex offenders pursuant to Section
12 3004.

13 (c) Nothing in this section shall be construed to prevent
14 punishment pursuant to any other law that imposes a greater or
15 more severe punishment, including, but not limited to, Section 594.

16 (d) This section shall not apply to the removal or disabling of
17 a monitoring device by a physician, emergency medical services
18 technician, or by any other emergency response or medical
19 personnel when doing so is necessary during the course of medical
20 treatment of the person subject to the device. This section shall
21 also not apply where the removal or disabling of the device is
22 authorized or required by a court of law or by the law enforcement,
23 probation, or parole authority or other entity responsible for
24 placing the device upon the person or that has the authority and
25 responsibility to monitor the device.

26 (e) “Disable,” for purposes of this section, includes, but is not
27 limited to, a willful and knowing failure to recharge an electronic
28 monitoring or supervising device, including a GPS device, on more
29 than one occasion, or for more than ____ hours.

30 SEC. 2. Section 6601 of the Welfare and Institutions Code is
31 amended to read:

32 6601. (a) (1) Whenever the Secretary of the Department of
33 Corrections and Rehabilitation determines that an individual who
34 is in custody under the jurisdiction of the Department of
35 Corrections and Rehabilitation, and who is either serving a
36 determinate prison sentence or whose parole has been revoked,
37 may be a sexually violent predator, the secretary shall, at least six
38 months prior to that individual’s scheduled date for release from
39 prison, refer the person for evaluation in accordance with this
40 section. However, if the inmate was received by the department

1 with less than nine months of his or her sentence to serve, or if the
2 inmate's release date is modified by judicial or administrative
3 action, the secretary may refer the person for evaluation in
4 accordance with this section at a date that is less than six months
5 prior to the inmate's scheduled release date.

6 (2) A petition may be filed under this section if the individual
7 was in custody pursuant to his or her determinate prison term,
8 parole revocation term, or a hold placed pursuant to Section 6601.3,
9 at the time the petition is filed. A petition shall not be dismissed
10 on the basis of a later judicial or administrative determination that
11 the individual's custody was unlawful, if the unlawful custody was
12 the result of a good faith mistake of fact or law. This paragraph
13 shall apply to any petition filed on or after January 1, 1996.

14 (b) The person shall be screened by the Department of
15 Corrections and Rehabilitation and the Board of Parole Hearings
16 based on whether the person has committed a sexually violent
17 predatory offense and on a review of the person's social, criminal,
18 and institutional history. This screening shall be conducted in
19 accordance with a structured screening instrument developed and
20 updated by the State Department of ~~Mental Health~~ *State Hospitals*
21 in consultation with the Department of Corrections and
22 Rehabilitation. If as a result of this screening it is determined that
23 the person is likely to be a sexually violent predator, the
24 Department of Corrections and Rehabilitation shall refer the person
25 to the State Department of ~~Mental Health~~ *State Hospitals* for a full
26 evaluation of whether the person meets the criteria in Section 6600.

27 (c) The State Department of ~~Mental Health~~ *State Hospitals* shall
28 evaluate the person in accordance with a standardized assessment
29 protocol, developed and updated by the State Department of ~~Mental~~
30 ~~Health~~ *State Hospitals*, to determine whether the person is a
31 sexually violent predator as defined in this article. The standardized
32 assessment protocol shall require assessment of diagnosable mental
33 disorders, as well as various factors known to be associated with
34 the risk of reoffense among sex offenders. Risk factors to be
35 considered shall include criminal and psychosexual history, type,
36 degree, and duration of sexual deviance, and severity of mental
37 disorder.

38 (d) Pursuant to subdivision (c), the person shall be evaluated *in*
39 *a face-to-face evaluation* by two practicing psychiatrists or
40 psychologists, or one practicing psychiatrist and one practicing

1 psychologist, designated by the Director of ~~Mental Health~~ *State*
2 *Hospitals*. If both evaluators concur that the person has a diagnosed
3 mental disorder so that he or she is likely to engage in acts of sexual
4 violence without appropriate treatment and custody, the Director
5 of ~~Mental Health~~ *State Hospitals* shall forward a request for a
6 petition for commitment under Section 6602 to the county
7 designated in subdivision (i). Copies of the evaluation reports and
8 any other supporting documents shall be made available to the
9 attorney designated by the county pursuant to subdivision (i) who
10 may file a petition for commitment.

11 (e) If one of the professionals performing the evaluation pursuant
12 to subdivision (d) does not concur that the person meets the criteria
13 specified in subdivision (d), but the other professional concludes
14 that the person meets those criteria, the Director of ~~Mental Health~~
15 *State Hospitals* shall arrange for further examination of the person
16 by two independent professionals selected in accordance with
17 subdivision (g).

18 (f) If an examination by independent professionals pursuant to
19 subdivision (e) is conducted, a petition to request commitment
20 under this article shall only be filed if both independent
21 professionals who evaluate the person pursuant to subdivision (e)
22 concur that the person meets the criteria for commitment specified
23 in subdivision (d). The professionals selected to evaluate the person
24 pursuant to subdivision (g) shall inform the person that the purpose
25 of their examination is not treatment but to determine if the person
26 meets certain criteria to be involuntarily committed pursuant to
27 this article. It is not required that the person appreciate or
28 understand that information.

29 (g) Any independent professional who is designated by the
30 Secretary of the Department of Corrections and Rehabilitation or
31 the Director of ~~Mental Health~~ *State Hospitals* for purposes of this
32 section shall not be a state government employee, shall have at
33 least five years of experience in the diagnosis and treatment of
34 mental disorders, and shall include psychiatrists and licensed
35 psychologists who have a doctoral degree in psychology. The
36 requirements set forth in this section also shall apply to any
37 professionals appointed by the court to evaluate the person for
38 purposes of any other proceedings under this article.

39 (h) If the State Department of ~~Mental Health~~ *State Hospitals*
40 determines that the person is a sexually violent predator as defined

in this article, the Director of ~~Mental Health~~ *State Hospitals* shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.

(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections and Rehabilitation. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

(k) An order issued by a judge pursuant to Section 6601.5, finding that the petition, on its face, supports a finding of probable cause to believe that the individual named in the petition is likely to engage in sexually violent predatory criminal behavior upon his or her release, shall toll that person's parole pursuant to paragraph (4) of subdivision (a) of Section 3000 of the Penal Code, if that individual is determined to be a sexually violent predator.

(l) Pursuant to subdivision (d), the attorney designated by the county pursuant to subdivision (i) shall notify the State Department of ~~Mental Health~~ *State Hospitals* of its decision regarding the filing of a petition for commitment within 15 days of making that decision.

(m) *(1) Whenever an individual has been convicted, as that term is defined in subdivision (a) of Section 6600, of a sexually violent offense, and the individual has been found, in an adjudicatory proceeding, to have willfully and knowingly removed or disabled, or to have knowingly permitted another to remove or disable, an electronic monitoring or supervising device, including a global positioning system (GPS) device, affixed to his or her person, the agency having supervisory authority over the individual shall refer the individual to the State Department of State Hospitals*

1 *for a full evaluation of whether the person meets the criteria in*
2 *Section 6600.*

3 *(2) For the purpose of this subdivision, “disable” includes, but*
4 *is not limited to, a willful and knowing failure to recharge an*
5 *electronic monitoring or supervising device, including a GPS*
6 *device, on more than one occasion, or for more than ____ hours.*

7 ~~(m)~~

8 *(n) This section shall become operative on the date that the*
9 *director executes a declaration, which shall be provided to the*
10 *fiscal and policy committees of the Legislature, including the*
11 *Chairperson of the Joint Legislative Budget Committee, and the*
12 *Department of Finance, specifying that sufficient qualified state*
13 *employees have been hired to conduct the evaluations required*
14 *pursuant to subdivision (d), or January 1, 2013, whichever occurs*
15 *first.*

16 *SEC. 3. No reimbursement is required by this act pursuant to*
17 *Section 6 of Article XIII B of the California Constitution for certain*
18 *costs that may be incurred by a local agency or school district*
19 *because, in that regard, this act creates a new crime or infraction,*
20 *eliminates a crime or infraction, or changes the penalty for a crime*
21 *or infraction, within the meaning of Section 17556 of the*
22 *Government Code, or changes the definition of a crime within the*
23 *meaning of Section 6 of Article XIII B of the California*
24 *Constitution.*

25 *However, if the Commission on State Mandates determines that*
26 *this act contains other costs mandated by the state, reimbursement*
27 *to local agencies and school districts for those costs shall be made*
28 *pursuant to Part 7 (commencing with Section 17500) of Division*
29 *4 of Title 2 of the Government Code.*

30 *SEC. 4. This act is an urgency statute necessary for the*
31 *immediate preservation of the public peace, health, or safety within*
32 *the meaning of Article IV of the Constitution and shall go into*
33 *immediate effect. The facts constituting the necessity are:*

34 *In order to ensure the safety of the public at the earliest possible*
35 *time, it is necessary that this act take effect immediately.*

36 ~~SECTION 1. Section 11340.3 of the Government Code is~~
37 ~~amended to read:~~

38 ~~11340.3. The director may employ and fix the compensation,~~
39 ~~in accordance with law, of professional assistants and clerical and~~

- 1 ~~other employees as is deemed necessary for the effective conduct~~
- 2 ~~of the work of the office.~~

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